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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;
MIDLAND FUNDING, LLC; MARK
T. CASE, and JANE DOE CASE,
husband and wife, KAREN HAMMER
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

PLAINTIFF'S RESPONSE TO
DEFENDANT'S STATEMENT of
FACTS RE MOTION FOR PARTIAL
SUMMARY JUDGMENT RE:
APPLICABLE STATUTE OF
LIMITATIONS

1. Suttell Defendants Fact #1. Disputed. Plaintiff denies she was issued a
credit card "through First Consumers National Bank ("FCNB")."

Plaintiff Gray applied to Spiegel for a charge card, and paid online to
PLAINTIFF'S RESPONSE TO
DEFENDANT'S LR 56.1 STATEMENT OF
FACTS - 1

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1 Spiegel at the Spiegel website. (Ct. Rec. 54). Plaintiff received
 2 statements which indicated that they were from “Spiegel” in large
 3 formatted type. The discovery responses from Midland Funding, LLC
 4 indicate that statements were sent as late as September 2004. (Ct. Rec.
 5 62-2, Exhibit 25). FCNB was ordered by the Office of Comptroller of
 6 Currency to cease and desist all account servicing on April 15, 2003.
 7 (Ct. Rec. 62-1, Exhibit 24, OCC order #2003-39). Further, the Suttell
 8 Defendants’ Exhibit “A” is not an original signed affidavit, contains
 9 hearsay declarations that do not meet the ER 803(6) business records
 10 exception, and has some indication of irregularity in its preparation.
 11 The Suttell Defendants have not explained why the hearsay should be
 12 admitted. Plaintiff has objected to the admission and moved to strike
 13 Exhibit “A” attached to the Suttell Memorandum. (Ct. Rec. 60).

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 18 2. Suttell Defendants Fact # 2. Disputed. The Suttell Defendants misstate
 19 and misrepresent the Declaration of Plaintiff Kelli Gray filed in state
 20 court and attached to the Suttell Defendants Memorandum as Exhibit
 21 “B” (citing to paragraph 3, Ct. Rec. 34-2, ¶ 3). Paragraph three (3)
 22 does not say that Ms. Gray made charges to her “FCNB account”,
 23 does not say that she was “receiving statements from FCNB”, and
 24 does not say that she was “making payments to FCNB.” Instead, Ms.
 25

1 Gray does not mention “FCNB” at all. Ms. Gray mentions only
2 “Spiegel” throughout her declaration (not FCNB). Ms. Gray indicates
3 that she purchased clothing from “Spiegel.” (Ct. Rec. 34-2, pp. 24-25,
4 ¶3).

5
6 3. Suttell Defendants Fact # 3. Disputed. Ms. Gray does not dispute that
7 at some point “she stopped making payments” to “Spiegel.” Plaintiffs
8 have moved to strike “Attachment ‘A’” to the Suttell Defendant
9 Memorandum. (Ct. Rec. 34-2, pp. 24-25).

10
11 4. Suttell Defendants Fact # 4. Disputed. Admit that the Suttell law
12 office filed an action in Spokane County Superior Court on October
13 27, 2008 for a debt. Midland Funding, LLC in its responses to
14 discovery claims that it did not hire the Suttell law firm. Suttell
15 Defendants cite to Exhibit “C” attached to Suttell’s Memorandum,
16 which is the Complaint filed in State Court, which does not support
17 the statement of facts. The Complaint is unverified and does not
18 mention “FCNB” at all. Instead, the Complaint indicates that
19 “Defendant has been the obligor of a certain credit card account” (Ct.
20 Rec. 34-3, p. 28, ¶ 3). The Complaint does not identify the creditor at
21 all, but instead calls the alleged obligation “certain” or “said credit
22 card account.” (Ct. Rec. 34-3, p. 28).

CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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